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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,900	09/27/2001	Yasuhiro Arai	FUJX 19.040	3229

7590 04/06/2005
Rosenman & Colin LLP
575 Madison Avenue
New York, NY 10022-2585

EXAMINER

HAN, CLEMENCE S

ART UNIT	PAPER NUMBER
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2665

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

Office Action Summary	Application No.		Applicant(s)	
	09/964,900		ARAI, YASUHIRO	
	Examiner		Art Unit	
	Clemence Han		2665	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>02/19/2002</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1-4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zuranski et al. (US 6,430,219) in view of Murphy et al. (US 6,856,683).

Regarding to claim 1, Zuranski teaches an XDSL modem 54 used for digital communication through a subscriber line 52 connecting a local switch and a customer premises equipment, and which includes a digital transmitting unit 84 for performing the digital communication using a data signal, the data signal being separated by a splitter from an analog control signal and a speech signal used for a telephone communication by use of an analog transmitting unit 80, the XDSL modem comprising; an evaluating unit for evaluating, prior to a start of a provision of a broadband communication service, a transmission characteristic of said subscriber line based on a reception result of a signal transmitted from said local switch through said subscriber line (Column 12 Line 31-32). Zuranski, however, does not teach a reporting unit for sending out said transmission characteristic

obtained by said evaluating unit to a network through said analog transmitting unit. Murphy teaches a reporting unit for sending out said transmission characteristic obtained by said evaluating unit to a network through said analog transmitting unit (Column 7 Line 43-46). It would have been obvious to one skilled in the art to modify Zuranski to report the characteristics of the subscriber line to a network as taught by Murphy in order to initialize modems successfully (Column 5 Line 44-55).

Regarding to claim 2, Zuranski teaches said evaluating unit includes: a requiring unit for sending out a predetermined requiring signal to the network through the analog transmitting unit (Column 12 Line 13-15); and an analyzing unit for analyzing a reception result of an analog signal according to receipt of a response signal sent back from a provider offering a broadband communication service in response to said requiring signal, the analog signal being generated by said local switch directly connected to said XDSL modem and being transmitted through said subscriber line, and for obtaining an evaluation barometer indicating a transmission characteristic of said subscriber line (Column 12 Line 31-32).

Regarding to claim 3, Zuranski teaches said analyzing unit includes; a level measuring unit for measuring a reception level of one of a secondary dial tone and a ringing signal which are transmitted from said Local switch; and

a signal loss calculating unit for calculating a transmission loss by a subscriber line between the local switch and the customer premises equipment based on said reception level, and for outputting the transmission loss as a barometer for evaluating a transmission characteristic of said subscriber Line (Column 12 Line 40-48).

Regarding to claim 4, Zuranski teaches said analyzing unit includes:
a signal level measuring unit for measuring a reception level of a modulated-analog signal transmitted from the local switch in response to a predetermined modulated signal in conformity with a recommendation V.90 by ITU-T; and
a signal loss calculating unit for calculating a transmission loss by said subscriber line between the local switch and the XDSL modem based on said reception level, and for outputting the transmission loss as a barometer for evaluating a line characteristic of said subscriber line (Column 12 Line 31-48).

Regarding to claim 6, Murphy teaches said evaluating unit includes:
a noise detecting unit for detecting noises having a reception level of a predetermined threshold value or more, from a signal which is input to the digital transmitting unit provided in the XDSL modem, the signal being separated from an analog signal by the splitter (Column 6 Line 45-50); and a periodicity examining unit for examining a periodicity of the noises detected by said noise-detecting unit

and for outputting an obtained examination result as a barometer for evaluating a transmission characteristic of said subscriber line (Column 6 Line 67 – Column 7 Line 2) .

Allowable Subject Matter

3. Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to the invention in general.

U.S. Patent 6,477,238 to Schneider et al.

U.S. Patent 6,744,811 to Kantschuk

U.S. Patent 4,766,594 to Ogawa et al.

U.S. Patent 6,839,383 to Karnes

U.S. Patent 6,574,308 to Macdonald et al.

U.S. Patent 6,385,203 to McHale et al.

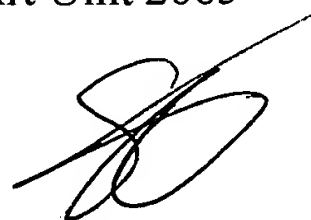
U.S. Patent 6,633,545 to Milbrandt

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clemence Han whose telephone number is (571) 272-3158. The examiner can normally be reached on Monday-Thursday 7 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on (571) 272-3155. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Clemence Han
Examiner
Art Unit 2665



STEVEN NGUYEN
PRIMARY EXAMINER